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DISTRICT OF COLUMBIA

STATEHOOD CONSTITUTIONAL CONVENTION

Friday, April 30, 1982
6:53 o'clock p.m.

Auditorium, 9th Floor
929 E Street, N.W.
Washington, D.C.

The plenary session of the Convention was convened, pursuant to notice, with Vice President Alexa Freeman presiding as Chairperson.

P R O C E E D I N G S

6:50 p.m.

DELEGATE FREEMAN: The meeting is now called to order. We will now have our period of brief meditation.

[Brief meditation.]

DELEGATE FREEMAN: Would you please call the roll?

SECRETARY COOPER: Delegate Baldwin.

Delegate Barnes.

Delegate Blount.

DELEGATE BLOUNT: Present.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: Here.

SECRETARY COOPER: Delegate Cassell.

Delegate Clarke.

Delegate Coates.

DELEGATE COATES: Present.

SECRETARY COOPER: Delegate Corn.

VOICE: Corn is here.

SECRETARY COOPER: Delegate Cooper. Present.

Delegate Croft.

DELEGATE CROFT: Here.

SECRETARY COOPER: Delegate Eichhorn.

DELEGATE EICHHORN: Here.

SECRETARY COOPER: Delegate Feely.

Delegate Freeman.

DELEGATE FREEMAN: Here.

SECRETARY COOPER: Delegate Garner.

DELEGATE GARNER: Here.

SECRETARY COOPER: Delegate --

DELEGATE FREEMAN: [Rapping for order] Delegates, will you please be quiet.

SECRETARY COOPER: Delegate Harris.

Delegate Holmes.

DELEGATE HOLMES: Here.

SECRETARY COOPER: Delegate Jackson.

DELEGATE JACKSON: Present.

SECRETARY COOPER: Delegate Johnson.

Delegate Jones.

DELEGATE JONES: Here.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Present.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Here.

SECRETARY COOPER: Delegate Lockridge.

DELEGATE LOCKRIDGE: Here.

SECRETARY COOPER: Delegate Long.

DELEGATE LONG: Here.

SECRETARY COOPER: Delegate Love.

Delegate Maguire.

Delegate Marcus.

Delegate Charles Mason.

DELEGATE CHARLES MASON: Here.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Present.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE BRIAN MOORE: Present.

SECRETARY COOPER: Delegate Jerry Moore.

Delegate Talmadge Moore.

Delegate Nahikian.

DELEGATE NAHIKIAN: Here.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: Here.

SECRETARY COOPER: Delegate Oulahan.

Delegate Paramore.

Delegate Robinson.

DELEGATE ROBINSON: Here.

SECRETARY COOPER: Delegate Rothschild.

Delegate Schrag.

DELEGATE SCHRAG: Here.

DELEGATE COOPER: Delegate Shelton.

DELEGATE SHELTON: Present.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: Present.

SECRETARY COOPER: Delegate Terrell.

DELEGATE TERRELL: Here.

SECRETARY COOPER: Delegate Thomas.

DELEGATE THOMAS: Here.

SECRETARY COOPER: Delegate Warren.

Delegate Baldwin.

Delegate Cassell.

Delegate Clarke.

Delegate Feely.

Delegate Brown.

Delegate Harris.

Delegate Johnson.

Delegate Jordan.

Delegate Love.

Delegate Maguire.

Delegate Marcus.

Delegate Jerry Moore.

Delegate Talmadge Moore.

Delegate Paramore.

Delegate Rothschild.

Delegate Warren.

DELEGATE FREEMAN: [Acting as Chairperson throughout

All right, there are 27 delegates present. Let us begin.

I have one suggestion after last night's experience that might make things move a little bit more smoothly. One of the problems last night is that there were amendments which delegates wanted to have considered but that we were unaware of as a body, that they were out there and so to the extent possible, delegates can write down their amendments and bring them up to the Chair, I can be at least assured of calling on you, to have your amendment considered.

I can also announce the fact that the amendments are there to be considered in advance of each article so that if the question is called, we can at least know that there may be one or two outstanding amendments that should be considered.

So if you can determine in advance that you want to make an amendment to a section in the article, please write it down and bring it up here. That also makes it easier for the secretary to read back off.

DELEGATE BLOUNT: Where are we now?

CHAIRPERSON FREEMAN: Delegate Blount, on 3.15.

DELEGATE BLOUNT: I move the adoption of 3.15,

expiration of term but also I am almost sure that there would have to be some adjustment because of the Jordan amendment.

DELEGATE COOPER: Second.

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: Madam President, I move an amendment to Section 3.15 which I am now passing out to the delegates.

This amendment is being made on behalf of myself and Delegates Love and Jordan.

This is a substitute amendment. There is one typographical error on the piece being passed out and that is the number at the top. It says "3.18" but it is actually a substitute for Section 3.15.

It reads as follows:

"Not less than eight months prior to the retention election provided for in Section 3.10 of this article the judge or justice may file with the Tenure Commission a request for official evaluation.

"If a request is filed, the Tenure Commission shall, not less than ninety days prior to the date of the election, prepare a written evaluation of the judge or justice's performance and of his or her fitness for continued service, including a rating selected from a scale that is

established by law.

"In the process of evaluating the judge or justice, the Commission shall gather relevant information from a representative sample of judges, lawyers, scholars, litigants and jurors familiar with the work of the judge or justice.

"The Commission shall make its report and rating available to the judge or justice, the press and the public. If no request for evaluation is filed, the Tenure Commission shall report that fact."

The purpose of this amendment is to give us a procedure analagous to the procedure of the Tenure Commission that presently operates and the one proposed by the committee but which is appropriate given the fact that we have voted to have retention election.

The purpose is to give judge or justice the option of having himself or herself evaluated by a professional commission which would not make a decision as to whether or not he stays in office but would be able to make a public report for the benefit of the voters.

The public report, of course, would not be binding on the voters. They could vote any way they wanted but this would give the judge or justice an option of having a professional evaluation prior to submission of his name to the electorate.

[The motion is made.]

CHAIRPERSON FREEMAN: Do I hear a second to that?

[There are several seconds.]

CHAIRPERSON FREEMAN: Delegate Schrag, is this a substitute motion?

DELEGATE SCHRAG: Yes.

CHAIRPERSON FREEMAN: Is there discussion on this substitute motion? Delegate Kameny.

DELEGATE KAMENY: I would like to know what led you to pick eight months specifically as distinguished from seven, nine, ten, eleven or twelve?

DELEGATE SCHRAG: A certain amount of time has to be available for the Commission to do its work.

DELEGATE KAMENY: Oh, I realize that.

DELEGATE SCHRAG: In addition, a certain amount of time has to be allowed for after the Commission does its work for the voters to take into account the results of the information to be able to integrate that into their thinking about it in connection with the election and it could be nine or ten but I --

DELEGATE KAMENY: No, all the points you have made, I recognize.

DELEGATE SCHRAG: Okay.

DELEGATE KAMENY: But I am curious as to what led you to eight and not nine or ten.

DELEGATE SCHRAG: Actually, Delegate Long recommended the eight and I did not question his reasons.

CHAIRPERSON FREEMAN: Any other discussion?

Delegate Eichhorn.

DELEGATE EICHHORN: Concern was expressed on the committee that extending the committee's recommendation might possibly identify lame ducks and that this might affect their performance for the remainder of their terms.

That concern was addressed or raised by lawyers who served on our committee. It is not something that I know had a proper address except to report to you that both Mr. Clarke and Mr. Oulahan were concerned about that and perhaps those of you in the legal profession can respond to that.

Another concern I would have is that a judge who did not request this evaluation would be raising a red flag and it would seem to me that it would be useful to require it across the board rather than to make it optional.

I understand the reason that it is optional is -- and I have heard the reasons and I am not sure I accept them and I think they should be shared more fully with the group, perhaps.

DELEGATE SCHRAG: All right, to respond to your first question, I think I need a bit more information. Could you elaborate the concern about the eight months?

DELEGATE EICHHORN: Our report, of course, was that they would indicate that the Tenure Commission -- whether they had planned to seek reappointment, which is a different matter, but a judge who does not ask for an evaluation may then be viewed as a judge who does not plan to seek to continue in the office.

DELEGATE SCHRAG: There is a difference between the system that I voted for the other night -- as a matter of fact, by the way we had it last night and the terms that you had originally in the committee report.

In the committee report, there was a bump every 12 years when the judge came up. Because of the lack of bump, there is no lame duck issue here.

DELEGATE EICHHORN: I just would like to say that they are not going to seek evaluation, they are going to resign.

DELEGATE SCHRAG: Well, the judge can run for re-election, even if he or she does not seek reevaluation, so that there is no lame duck, period. If the judge resigns, he or she resigns, period. There is never a moment, except

during the time that the judge or justice announces a resignation and the time that resignation is effective, if the judge postpones the effective date.

To respond to your second question, the reason it is made optional is that there might be an occasion in which the judge or justice regarded himself or herself as responsive and popular and had no doubts of his or her reelection potential but regarded the tenure commission as being staffed in an unfair manner.

And since we are leaving it to the public, under the Jordan Amendment, to be the ultimate judge of whether or not a judge should be retained, it seems appropriate to give the judge the option of going directly to the people and seeking reelection without the evaluation.

I think that in most cases, judges or justices would welcome the evaluation as a means of informing the people as to their performance but there might be a rare case when the judge or justice would want to go directly to the people without the interim evaluation.

DELEGATE EICHHORN: I would like to correct the record as far as saying --

CHAIRPERSON FREEMAN: Delegate Eichhorn, I think you and Delegate Schrag are carrying on a personal conversation

at this point.

Delegate Moore -- Brian Moore.

DELEGATE MOORE: I just had a question of one of the co-signers, Absalom Jordan.

Absalom, why would you agree to co-signing this amendment, if you wanted the judges to be accountable directly to the public or to the people? Why would you want the judges to subject themselves to a tenure commission? And if the tenure commission did not think the judge was doing a good job, their recommendation may have very -- carry much more weight with the people than -- than you would like or something like that.

Because it seems to me your original motion that passed, we are concerned about this body that evaluates judges.

CHAIRPERSON FREEMAN: Delegate Jordan, would you care to answer that?

DELEGATE JORDAN: Yes. In my argument, I was thinking about the judicial tenure and the disabilities commission. That was part of my rationale for wanting it. I do not think that this in any way subtracts from or lessens the impact of Section 3.10.

I think that it kind of brings 3.10 into conformity with some other provision in this section or in this

article. And also, it is optional. And the question is, you know, what criteria would be used to assess the performance of the judge?

And I think this kind of makes available to judges an objective basis for making these criteria as opposed to some other basis which may have worked towards acceptance.

CHAIRPERSON FREEMAN: Delegate Thomas.

DELEGATE THOMAS: This is the first time in this convention that I have agreed with Delegate Moore on this and it seems very strange to me to see an amendment come out with Jordan and Schrag.

[Laughter.]

I have no problem with the Schrag but I just cannot see the rationale and I want the record to show that. I am very surprised at Mr. Jordan.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: Thank you, Madam Chair.

I am very supportive of this motion and of the work that Delegates Jordan, Love and Schrag have put into it.

However, I am persuaded by Delegate Eichhorn's concern about the eight-months and about the optional nature of this provision.

To settle that issue, I would like to propose an

amendment to the Schrag substitute. That amendment is, to delete the first three lines and the first seven words in the fourth line.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

[There are several seconds.]

DELEGATE GARNER: The motion would now read, beginning, "The Tenure Commission shall, not less than 90 days prior to the date of the election, prepare a written evaluation," blah, blah, blah.

I believe that would answer some of the questions that have been raised and would still meet the very fine objectives of the original proposal by Delegate Schrag, Love and Jordan.

CHAIRPERSON FREEMAN: Delegate Coates, do you wish to speak?

DELEGATE COATES: Yes, I do, thank you, Madam President.

I am opposed to this substitute for the reason that I am convinced that the direction now which moved me in adopting the overall Jordan amendment is sufficient to assure --

CHAIRPERSON FREEMAN: Excuse me, Delegate Coates. I am having a hard time hearing. Delegates

Simmons and Robinson, please speak more quietly.

Continue, Delegate Coates.

DELEGATE COATES: The rationale which was persuasive to me was the fact that the fact that the Jordan amendment answered the question as to how judges will be evaluated, namely mainly by how they are perceived from the public perspective.

The free press contributes to that and has not been negligent in exercising its responsibility thereto. It would appear to me that if it is their will or opportunity for expression of will in this regard -- if it is tempered by the Judicial Tenure and Disabilities Commission, we are bringing back in a part of what we eliminated in adopting the Jordan Amendment.

[Several voices agree.]

There is no sense in it. I am perfectly prepared to rest the case with the public reception.

Further consideration is that it is my opinion as a lay person in matters of law that where a person fails to take the stand, one could presumptively argue that by so doing, he would weaken or expose himself to cross-examination in regard to his defense and th s be exposed at certain points so that if a judge failed to ask for an evaluation, it would

seem to me that that would be a tendency within the body politic to view that that judge had something to hide when, in fact, he may not have anything to hide.

It would appear to me that, while well-intending, this would probably be a substitute that we reject, for the reasons I have cited and for other reasons which other delegates have shared with us.

CHAIRPERSON FREEMAN: Delegate Jackson.

DELEGATE JACKSON: I would speak against this. It seems to me that it should be submitted for reconsideration, nothing more and nothing less and I really do not like the rationale behind it. I would think that those who appoint judges would be able to figure out if they wanted somebody else, and figure out a simple reason.

This provides nothing and I don't see a single argument for it. And -- and --

DELEGATE SCHRAG: Point of order.

DELEGATE JACKSON: Will you sit down till I am finished?

DELEGATE SCHRAG: Sorry to interrupt, Madam President, but the motion on the floor is the Garner Amendment and the last two speeches have not been pertinent or germane to that amendment. They have been pertinent to the main

substitute.

DELEGATE JACKSON: I speak to what was stated was before us, the Schrag Amendment.

CHAIRPERSON FREEMAN: Delegate Jackson, before the Garner Amendment is the Schrag Amendment.

DELEGATE JACKSON: Well, then, I would like to speak against the Schrag Amendment when the time comes.

DELEGATE CORN: So would I.

DELEGATE JACKSON: Thank you for being so smart, Mr. Schrag.

DELEGATE CORN: So would I like to speak against it.

CHAIRPERSON FREEMAN: Is there anyone who would like to speak to the Garner Amendment? Delegate Moore.

DELEGATE BRIAN MOORE: Yes. is the maker of the Tenure Commission the same as the Judicial Nominating Commission -- as suggested by Mr. Love's Amendment last night?

Was that addressed?

DELEGATE LOVE: No.

DELEGATE BRIAN MOORE: That was not addressed?

DELEGATE LOVE: No.

DELEGATE BRIAN MOORE: There are now six members recommended by the committee?

CHAIRPERSON FREEMAN: We are not at that section

yet, Delegate Moore.

All those, then, in favor of the Garner Amendment -- oh, excuse me, Delegate Eichhorn, did you have your hand up?

DELEGATE EICHHORN: I would like to speak to the Garner Amendment, since two people have not.

CHAIRPERSON FREEMAN: All right.

DELEGATE EICHHORN: I have some difficulty in envisioning how the public is going to evaluate the performance of judges. That is what it comes down to.

We have one newspaper in this town which is a national newspaper and the coverage of the courts is very limited.

We are used to electing legislators and I think we all have an idea of the qualifications for a legislator but I am not sure that -- just as I could not hire a personnelist, and I am not sure I could hire a surgeon -- I am not sure that I have all of the qualifications to evaluate judicial candidates.

CHAIRPERSON FREEMAN: Delegate Eichhorn, are you speaking to the Garner amendment?

DELEGATE EICHHORN: Yes, I am. I would like to have the benefit of the views of people who work in the professions and public persons who serve on a Commission with

that body and benefit from that knowledge to make an evaluation, to help me to make up my mind, if I am going to be involved in these elections.

I think that professional persons are very loathe to come down hard on other persons within their professions; generally we say that lawyers will not police themselves and doctors will not police themselves. I cannot imagine that the Tenure Commission, with a majority of lawyers, is going to say that two-thirds of them or any significant number of them, are to be rated low. That is just not very likely to happen.

I think what will happen is that if somebody is appointed who does not perform competently, that person may choose not to continue, being faced with a Tenure Commission evaluation and that is a protection that is built into this system.

And if they have performed, I do not think that they will be afraid of that evaluation. I think if we provide for a Tenure Commission that is, again, broadly based, that includes public members and lawyers, I think the public members are fully capable of learning whatever it is that makes a good judge -- how you listen to the way someone approaches problems and issues, what kinds of thinking and training are called for.

And they will be able to make evaluations that will be a guide to the public. The public can reject them. If a judge feels he or she is evaluated unfairly, then they can simply say that and explain why and people can buy that. That is why I support it.

CHAIRPERSON FREEMAN: Delegate Cooper.

DELEGATE COOPER: That is not speaking to the amendment. The amendment deals with how the judge must file with the Tenure Commission, not the make-up of it.

CHAIRPERSON FREEMAN: That is correct. The Garner Amendment refers to whether it is mandatory or optional and --

DELEGATE EICHHORN: I support it being mandatory. That is the point I am trying to make. I think it is useful procedure. I think it should be mandatory and I support the amendment.

CHAIRPERSON FREEMAN: Delegate Garner, are you seeking to close off debate on this?

DELEGATE GARNER: Yes, I am.

CHAIRPERSON FREEMAN: I would like to call on Delegate Mason then, first. Thank you.

Delegate Mason.
Charles
DELEGATE/MASON: If Delegate Garner's amendment

were adopted, it is my understanding that you would strike the first two lines -- the first three lines and about half of the fourth line, up to the word "The" and then start "The Tenure Commission" with a capital "T." Is this a correct understanding of what his amendment consisted of?

SEVERAL VOICES: Yes.

DELEGATE CHARLES MASON: If that is done, it seems to me that there are a couple of more conforming changes that are needed. When we get to the following line and say "The election," I think we should say "The retention election" because we have stricken the first place where we said that and when we get to the ine after that, it should be "a judge," rather than "the judge."

These are just conforming language changes that would be necessary were we to strike the first portion of the paragraph.

DELEGATE SCHRAG: And the last sentence.

DELEGATE CHARLES MASON: Yes, and the last sentence.

CHAIRPERSON FREEMAN: Thank you, Delegate Mason. If we adopt the Garner Amendment, then we shall consider those.

Delegate Garner.

DELEGATE GARNER: Yes, I would like to say that I

support it very strongly, Delegate Jordan, the proposal that we have no election of judges. I believe this motion that is on the main motion on the floor is in support of that and my amendment is in support of that and I urge you to vote for it.

CHAIRPERSON FREEMAN: All right, all delegates who are in favor of adopting the Garner Amendment, please say aye.

[There is a chorus of ayes.]

DELEGATE CORN: Roll call vote.

CHAIRPERSON FREEMAN: Do I hear four other calls for a roll call vote? -- two, three -- we need one more -- five.

Delegate Cooper, could you please read the roll?

SECRETARY COOPER: Delegate Croft.

Delegate Eichhorn.

DELEGATE EICHHORN: Yes.

SECRETARY COOPER: Delegate Feely.

Delegate Freeman.

DELEGATE FREEMAN: No.

SECRETARY COOPER: Delegate Garner.

DELEGATE GARNER: Yes.

SECRETARY COOPER: Delegate Graham.

Delegate Harris.

Delegate Holmes.

Delegate Jackson.

Delegate Johnson.

Delegate Jones.

DELEGATE JONES: No.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Yes.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Abstain.

SECRETARY COOPER: Delegate Lockridge.

DELEGATE LOCKRIDGE: No.

SECRETARY COOPER: Delegate Long.

DELEGATE LONG: No.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: Pass.

SECRETARY COOPER: Delegate Maguire.

Delegate Marcus.

Delegate Charles Mason.

DELEGATE CHARLES MASON: Yes.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Pass.

SECRETARY COOPER: Delegate Charles Mason, how did you vote?

DELEGATE CHARLES MASON: I voted yes.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE BRIAN MOORE: Yes.

SECRETARY COOPER: Delegate Jerry Moore.

Delegate Talmadge Moore.

Delegate Nahikian.

DELEGATE NAHIKIAN: Yes.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: No.

SECRETARY COOPER: Delegate Oulahan.

Delegate Paramore.

Delegate Robinson.

DELEGATE ROBINSON: No.

SECRETARY COOPER: Delegate Rothschild.

Delegate Schrag.

DELEGATE SCHRAG: Yes.

SECRETARY COOPER: Delegate Shelton.

DELEGATE SHELTON: No.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: No.

SECRETARY COOPER: Delegate Street.

Delegate Terrell.

DELEGATE TERRELL: No.

SECRETARY COOPER: Delegate Thomas.

DELEGATE THOMAS: No.

SECRETARY COOPER: Delegate Warren.

Delegate Baldwin.

Delegate Barnes.

Delegate Blount.

DELEGATE BLOUNT: No.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: Yes.

SECRETARY COOPER: Delegate Clarke.

Delegate Coates.

DELEGATE COATES: Pass.

SECRETARY COOPER: Delegate Cooper. No.

Delegate Corn.

DELEGATE CORN: Pass.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: No.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Yes.

SECRETARY COOPER: Delegate Coates.

DELEGATE COATES: Yes.

SECRETARY COOPER: Delegate Corn.

DELEGATE CORN: No.

SECRETARY COOPER: Delegate Cassell.

[Pause.] Madam Chair, the vote stands 10 in favor of the Garner Amendment, 14 not in favor and one abstaining.

DELEGATE GARNER: A point of order. YOu called some of the roll a second time around.

SECRETARY COOPER: Yes.

CHAIRPERSON FREEMAN: All right, we are now back to the Schrag Amendment and we have in order, Delegate Jackson -- Delegate Jackson is gone -- Delegate Long, did you wish to speak to the Schrag Amendment?

DELEGATE LONG: No.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: I wish to speak against this whole amendment, for several reasons. First of all --

SPEAKER: Delegate Long was next. Isn't he here?

DELEGATE CORN: Delegate Long is there. Did you want to speak, Delegate Long?

DELEGATE LONG: No.

CHAIRPERSON FREEMAN: I called him and he did not wish to speak.

DELEGATE CORN: All right. I would speak against this whole amended motion for the following reasons. The

reason that those of us who voted for the Jordan Amendment the other night did so was because we felt that in the end, it would be less political to have a judge have to come before the entire electorate than it would be to subject that judge to a tenure commission.

The electorate -- while the electorate may be able to put pressure on a judge over a length of time over a three-year period, that electorate cannot put pressure on a judge on a case-to-case basis.

However, a tenure commission certainly can put pressure on a judge on a case-to-case basis and I'll tell you how. For instance, if the Governor's wife's nephew's son or something like that, or some big political campaign contributor of the Governor or some member of their family were, in fact, in front of that judge -- if they are on a fraud case, it is very easy, especially since so many members of the Tenure Commission are from the Mayor's office -- the Governor's office, excuse me -- or from the Bar Association and believe me, the Bar Association is far from unpolitical -- or from -- would you let me finish speaking? Would you give me that courtesy?

CHAIRPERSON FREEMAN: Delegate Corn, you do have the floor.

DELEGATE CORN: Or -- [Stops for side conversation.]

CHAIRPERSON FREEMAN: Delegate Coates -- Delegate Coates, Delegate Corn has the floor.

DELEGATE CORN: Or where, you know, when you have got the Tenure Commission lined up where it is from the Governor's office, from the Board of Governors of the Unified Bar -- which is certainly political, too -- and you have it from the legislature, i.e. a subcommittee. And this is a solidly Democratic town, you know that all six of those people or five of those people, they are all party-controlled and if somebody is in trouble who is in some way strongly-related to the Governor, it is very easy for the Governor's office to call the members on the Tenure Commission and say, "Lean on the judge a little bit."

And while the judge cannot overtly and obviously throw a case, that judge can make rulings which will make certain evidence inadmissible, make certain other issues inadmissible, make rulings in such ways that can make that judge, in essence, throw the outcome of the case in a more subtle way.

And therefore, I would be opposed to a tenure commission at all, in any shape, form or manner. I urge you to vote against this amendment and I urge you to vote against

this whole section and to vote to delete it.

Can I move a substitute to delete the whole section?

SEVERAL VOICES: No.

CHAIRPERSON FREEMAN: No. If the amendment is voted down, then that will accomplish the same purpose.

Delegate Love.

DELEGATE LOVE: I would like to urge my fellow delegates to vote for the amendment for several reasons.

I think one of the more important reasons is, as you know, when we have an election, people are endorsed by all sorts of groups -- the union, the Republican Party -- there will be a number of endorsements and in a sense, all of the endorsements will be political.

But the group of people that I think should be asked is that of the judges themselves and they will not be represented and there will also be an even more important group and those will be the litigants. Those will be the people who go before the judges and who get justice.

There will be another group who will not be asked. Those will be the jurors, those of us who have to sit for two weeks -- as many of us have done -- and be treated very well by some judges and be treated very poorly by other

judges.

If you will notice what this proposal does is, it asked -- it requires that this commission interview not only lawyers, not only the Bar Association, not only judges, but the people who use the courts and the people who are jurors in front of the courts.

I think this is a very important step. I think because this group will be somewhat independent, that its ratings will be more objective than the ratings that you will get, for example, from the Republican Party or, indeed, from the Bar because I am sure the Bar Association will rate these people also.

So I urge us to adopt the rating system which is objective but which also takes into account the little people that use the courts -- not only the judges, not only the lawyers, but also the litigants, the people who use the court and the jurors -- the peers, the people who ultimately make the judgment.

I think this is a very good proposal and I would urge support of it. Thank you.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: I would like to speak in opposition to this amendment. I was strongly opposed to the

Ab Jordan Amendment but it passed and unless we have a two-thirds vote on the second reading to overturn it, we will have to live with it.

I think this only clutters matters. I think the answer is to delete 3.15 after we dispose of this entirely and move to Judicial Disabilities and Tenure Commission.

CHAIRPERSON FREEMAN: Delegate Kameny.

DELEGATE KAMENY: I merely wanted to repond very briefly to some of the objections that were made a few moments ago to this proposal.

If I thought that we have even the remote possibility of the massive corruption in the judicial system ongoing as proposed by Delegate Corn in her suggestion, I would feel cynical about the value of having any judges or any judiciary at all and I simply do not see that kind of thing done -- I don't see it going on, you know, so that I do not see those concerns as being truly applicable and it would be a bad day if they were so I would urge support of this proposal.

CHAIRPERSON FREEMAN: Delegate Bruning.

DELEGATE BRUNING: Yes. I want to speak in favor of this proposal. I speak in favor of the proposal as someone who supported the concept of a retention of extra judges. I felt strongly that that provision should remain in effect and

my sticking point was essentially that that had to remain in effect and the reconsideration would have probably thrown that out.

But I think it does it no harm, particularly with a commission that would have to address the entire group that deals with the criminal justice system, from the defendants to the lawyers to everybody that consumes justice and has justice done or not done to them, for consideration and I personally as a voter would like to see some information that says, this person gets overturned 20 times, this person is always late, this person is, you know, courteous and efficient.

I would like to see some of those things. And then I am going to put other factors into effect so I can say, yes, they have said all of the above about this judge but I have dealt with him and I believe he is a good judge.

I can still have leeway over that. But I do not object to having more information on trying to make a decision.

Thank you.

CHAIRPERSON FREEMAN: Delegate Mason, I am going to ask if you can refrain right now because others have not yet had a chance to speak on this.

Delegate Jordan.

The rules say that we should try, to the extent

possible, to have every delegate have an opportunity to speak once before another speaks again.

DELEGATE JORDAN: First, I would like to refer back to some of the initial discussion on this article. There is a question about those who have met with or huddled with the other side and capitulated and I want to state that I have not met with the other side, nor have I crossed over to it.

And then there was a reference made to a surprise for someone to see my name on a proposal from these two delegates and all I can say is, he was no more surprised than I was when I saw his name on a proposal that contained two delegates names on it, from Ward 3 -- if you want to look at that.

And also, no more surprised than when I saw his name on it, on a proposal of the delegate from Ward One. All I am saying is that that was an ad hominem attack in both instances and it added nothing to the substance but it had created a false issue.

And I guess sometimes that is what we have to deal with when we are talking political.

I think, too, another point that has to be made is that I would think that every member of the Judiciary Committee would support this concept because the report came out

of the committee with a provision similar to this.

Now, 3.15, as the committee had submitted it to us provided for a review process and for a report to the public and then all of a sudden, I hear some people say that they are opposed -- conceptually, I guess -- to this idea of some kind of review, some kind of analysis, some information to work from.

In absence of an impartial report, what will the citizens have to help them in making their decision?

Now, I do not want to cast any aspersions or anything but in a city that only has one newspaper and in a city that has radio stations that have ad editorials that are opposed to statehood -- and I could go on and on and on with examples of the responsiveness of the media to the concerns of the people in this city -- and in a city where the media has fomented public opinion so that they have at various points created within the public's mind certain issues which were not there, I would just have a problem with trusting my fate at this point to some of the media that exists.

So we do not have an impartial or unbiased source from which citizens in this city can get information.

Now, if folks want to say that it is up to the will of the people that, in fact, we will do precisely what

some of the folks said they did not want to do.

They said they did not want to politicize the process. But if you do not use some vehicle for getting the information across to the people and have an impartial process for getting the information across to the people, then I think judges will be left to their own devices and do their own campaigning.

This proposal will eliminate the need for the judges to "raise war chests." Or to have to try to raise a significant amount of money to get their message across to the people that they should be elected.

There is another important aspect of this proposal. It is voluntary. No one has to use it. And I do not think it carries with it a stigma whether you use it or do not use it that the public will not be able to make some rational decision.

But I know that I would be helped and facilitated in my efforts when it came time to vote in elections if I had the benefits of some objective evaluation.

So I would just like to ask you to vote for it.

I think that if you will read it, it does no harm to Section 3.10 and if it did that, I would stand up and oppose it. I would be vehemently opposed to it.

My time is up? Thank you.

CHAIRPERSON FREEMAN: Delegate Nahikian.

DELEGATE NAHIKIAN: I would like to share with the other delegates a discussion that I had with a woman, a black woman, who is a judge in the City of Philadelphia.

The City of Philadelphia uses a system similar to the one that we are proposing here tonight with one exception and that is, instead of appointment -- initial appointment of judges, there is initially election of judges.

But then at the end of the judge's term, the judge stands for retention, a yes or no vote.

In Philadelphia, however, the system is a little more exclusionary, even, than the one proposed here and in the sense that it is the Bar Association that does the evaluation and the Bar Association puts out their own worry as to whether or not they find this judge qualified or unqualified.

In this particular instance, the reason why I support this amendment is because I think it does two things.

It provides a balance and number two, it provides probably the most objective process and finally, it publishes its results. If somebody is in a public office affecting lives and being paid by public money, then that person's performance can be evaluated just like an elected official's

performance is evaluated and it all is made public.

The same process happens now except that it is all secret and it all very exclusionary because unless you have enough money to run in those particular social circles, you do not hear the discussions.

So I would just urge the delegates to support the motion and the amendment and if it is in order, I would like to call the question.

[The question is called.]

CHAIRPERSON FREEMAN: It is in order. There have been more than --

SECRETARY COOPER: Point of order. Ms. Nahikian was recognized to speak. As I recall, Ms Corn spoke against the motion.

CHAIRPERSON FREEMAN: That is correct, Delegate Cooper. You are correct. Delegate Schrag is next on the list.

DELEGATE SCHRAG: I would like to reserve my opportunity to speak and speak last to close debate on my motion.

CHAIRPERSON FREEMAN: Thank you.

Delegate Thomas has not yet had an opportunity to speak.

[Delegate Thomas indicate he does not wish to speak.]

CHAIRPERSON FREEMAN: All right, Delegate Mason.

DELEGATE CHARLES MASON: Delegate Jordan has said much of what I was going to say but I might add one point.

In the District of Columbia and the State of X we will have 50-some-odd judges who are local judges plus as many more who are federal judges.

Most of the public does not know who these people are. They only know the local judge and the metro judge and maybe they know which is which and when a name is coming up on the ballot for approval or disapproval anything that will educate the public about this person, identify not only who he or she is but give a reasonably objective evaluation, it seems to me is all to the good.

We do not want persons going and voting on the basis of no information, just on how he or she spells the name or how long a name or short a name it is or where it appears on the ballot. Their opinion should be based on some information about the person -- the judge. And it seems to me that this is one of the best possible ways to disseminate information to the public.

CHAIRPERSON FREEMAN: Delegate Garner.

DELEGATE GARNER: I call the question.

[The question is again called.]

DELEGATE SCHRAG: Madam Chair, I had been recognized to speak to the motion.

CHAIRPERSON FREEMAN: Yes.

DELEGATE SCHRAG: I would just make two points, Madam President. The first is that I also -- like my fellow Delegate Jordan -- was surprised to hear that any delegate was surprised that Delegate Jordan and I cosponsored the same amendment.

It is true that Delegate Jordan and I were on opposite sides of a serious debate the other night and we have different conceptions of the best way in which to structure our judiciary.

But that was the other night and we had that battle and it was decided in one particular way and now we have to go on to write a constitution and I think all of us have a common purpose in writing a constitution together and getting the different sections of it reconciled and making the whole document work together. I think that is what we are about when Delegate Jordan and I seek to persuade you together that this is the best way to meld the various provisions and the various conceptions of the constitution that we have.

Now, on the merits of this amendment, I want to call to your attention one new feature of the Missouri Plan.

The Missouri Plan worked fairly well in the State of Missouri and has worked well in a number of states in the 1950's and the 1940's and the 1960's. But I want to call to the attention of the delegates that there is a new factor in the late 1970's and 1980's that could affect our judgeship selections one day and that is the emergence of single-interest political groups that come into an area and try to target somebody for extinction on the basis of some political position that person has taken, whether it be a judge or a legislator.

I want to remind you of the campaign that was run against Judge Rose Byrd, a very progressive judge in California in 1978 and I am reading to you from Newsweek Magazine, October 23rd, 1978. It says, "Normally, elections of judges draw great yawns from the electorate but after a generation of judicial activism in which the courts have made controversial decisions on busing, racial quotas and criminal rights, voters are increasingly voting against unpopular judges who face reelection.

"Byrd is now the target of two inflammatory t.v. spots and two separate groups are campaigning against her. It

is a potentially disastrous situation, says the legal affairs secretary to Governor Jerry Brown, it is politicizing the Bench in a way it has never been politicized before.

"Byrd refuses to defend herself," says Newsweek.

Why does Byrd refuse to defend herself? "Because it is not proper for judges to campaign and to run for election based on their positions." There is a tradition of judges remaining silent and so somebody else has to bring their qualifications to the attention of the electorate when a right-wing group runs an expensive and highly-publicized campaign against her.

"She refuses to defend herself but her foes are outspoken. They attack her lack of prior experience as a judge and criticize the court decision that allowed busing in Los Angeles schools. The Law and Order Campaign Committee produced some dramatic -- some say unfair -- t.v. commercials on the rape and busing issues."

Now, this is what we may face some day. This is why I voted against the Jordan proposal initially. But since we have adopted the Jordan proposal, the least we can do is bring some professional, objective, evaluative material to the attention of the voters in the event that some right-wing group comes in to try to attack a progressive judge on the

basis of his or her decision in our new state.

Thank you.

CHAIRPERSON FREEMAN: All those delegates who are in favor of closing off debate, plase say aye.

[There is a chorus of ayes.]

CHAIRPERSON FREEMAN: All those opposed.

[There is one nay.]

CHAIRPERSON FREEMAN: You are now voting on the Jordan, Love and Schrag amendment.

DELEGATE KAMENY: Point of order. You did not announce the result of our vote to close off debate.

CHAIRPERSON FREEMAN: Thank you, Delegate Kameny. But I did by announcing that we are now voting on the amendment, though, actually, I did not. Thank you.

We just voted, then, Delegates, to close off debate. We are now voting on the --

DELEGATE CORN: Roll call vote. Roll call vote.

CHAIRPERSON FREEMAN: May I see hands.

Are there two other delegates who wish a roll call?

[Five persons wish a roll call vote.]

CHAIRPERSON FREEMAN: There will be a roll call vote.

DELEGATE KAMENY: Point of order. You need to state what the vote is for.

CHAIRPERSON FREEMAN: This is on the amendment that we are now voting.

Delegate Cooper, would you please read the roll call?

DELEGATE KAMENY: This is the substitute motion.

CHAIRPERSON FREEMAN: Excuse me. Substitute motion.

SECRETARY COOPER: Delegate Eichhorn.

DELEGATE EICHHORN: Yes.

SECRETARY COOPER: Delegate Feely.

Delegate Freeman.

DELEGATE FREEMAN: Yes.

SECRETARY COOPER: Delegate GArner.

DELEGATE GARNER: Yes.

SECRETARY COOPER: Delegate Graham.

Delegate Harris.

Delegate Holmes.

DELEGATE HOLMES: No.

SECRETARY COOPER: Delegate Jackson.

Delegate Johnson.

Delegate Jones.

DELEGATE JONES: Pass.

SECRETARY COOPER: Delegate Jordan.

DELEGATE JORDAN: Pass.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Yes.

SECRETARY COOPER: Delegate Lockridge.

DELEGATE LOCKRIDGE: Abstain.

SECRETARY COOPER: Delegate Long.

DELEGATE LONG: Yes.

SECRETARY COOPER: Delegate Love.

DELEGATE LOVE: Yes.

SECRETARY COOPER: Delegate Maguire.

Delegate Marcus.

Delegate Charles Mason.

DELEGATE CHARLES MASON: Yes.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Yes.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE BRIAN MOORE: No.

SECRETARY COOPER: Delegate Jerry Moore.

Delegate Talmadge Moore.

Delegate Nahikian.

DELEGATE NAHIKIAN: Yes.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: Yes.

SECRETARY COOPER: Delegate Oulahan.

Delegate Paramore.

Delegate Robinson.

DELEGATE ROBINSON: Yes.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: Yes.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: Yes.

SECRETARY COOPER: Delegate Shelton.

DELEGATE SHELTON: No.

SECRETARY COOPER: Delegate Street.

Delegate Terrell.

DELEGATE TERRELL: Yes.

SECRETARY COOPER: Delegate Thomas.

DELEGATE THOMAS: After consulting with Mrs. Hilda Mason, much as I hate to, I have to vote yes.

[Laughter.]

SECRETARY COOPER: Delegate Warren.

Delegate BAldwin.

Delegate Barnes.

Delegate Blount.

DELEGATE BLOUNT: Yes.

SECRETARY COOPER: Delegate Bruning.

DELEGATE BRUNING: Yes.

SECRETARY COOPER: Delegate Clarke.

Delegate Coates.

DELEGATE COATES: No.

SECRETARY COOPER: Delegate Cooper. Yes.

Delegate Corn.

DELEGATE CORN: No.

SECRETARY COOPER: Delegate Croft.

Delegate Cassell.

Delegate Jones.

Madam Chair, the substitute motion is as follows; 20 in favor, six not in favor, one abstaining.

CHAIRPERSON FREEMAN: The substitute motion for 3.15 is carried.

Delegate Blount.

DELEGATE BLOUNT: I move the adoption of Section 3.16, Judicial Disabilities and Tenure.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second?

DELEGATE BRIAN MOORE: Madam President, point of order.

CHAIRPERSON FREEMAN: Discussion. Delegate Moore.

DELEGATE BRIAN MOORE: Madam President, did you ask the body before -- there was only one amendment made to this article. It was done right away. In fact, Delegate Blount made a motion. There may have been other delegates who had another amendment.

CHAIRPERSON FREEMAN: This is a substitute motion. I announced and I will announce one more time that it is easier if delegates have proposed amendments, to bring them up to the Chair and that way --

VOICE: With text.

CHAIRPERSON FREEMAN: With text, yes and also citing the section and the line that you are planning to amend and that way I can know when I am calling on people to try to cover all the amendments and if you will bring them up here, I will then call all the amendments.

A substitute motion, however, substitutes the entire section.

Now, is there discussion on Section 3.16?

Delegate Corn.

DELEGATE CORN: I have several different amendments

for this. I would like to start with the first one on page 1e, line 6. I would like to change "one year" to "five years," for conformity.

DELEGATE THOMAS: Point of order.

CHAIRPERSON FREEMAN: Delegate Thomas.

DELEGATE THOMAS: Madam Chairman, all of the other proposed amendments have been in writing. All of the delegates had an opportunity to see them. I think it is a shame for us to try to consider something and have nothing in front of us to even try to decide. And --

DELEGATE CORN: Point of order, Madam Chair.

CHAIRPERSON FREEMAN: Delegate Thomas, Delegate Corn is in order. On the first reading we can accept amendments in any way, shape or form.

Delegate Corn.

DELEGATE THOMAS: I have a problem with it.

DELEGATE CORN: Well, that is your problem.

CHAIRPERSON FREEMAN: Excuse me, Delegate Corn.

DELEGATE CORN: Okay, on page number 13 B, number 1, capital "B," this is line 6, I would like to change "one year" to "five years."

[A motion is made.]

CHAIRPERSON FREEMAN: Is there a second to that?

VOICE: Second.

[There is a second.]

VOICE: Which one is that?

CHAIRPERSON FREEMAN: This is page 13, line 6, to substitute one for five years -- one year for five years.

VOICE: Page what?

CHAIRPERSON FREEMAN: Page 13.

Delegate Corn, would you like to speak to your amendment?

DELEGATE CORN: That first amendment?

CHAIRPERSON FREEMAN: Yes.

DELEGATE CORN: I have several amendments. This is the first.

CHAIRPERSON FREEMAN: Right. We will take them one at a time.

DELEGATE CORN: Page 13, everybody. Line 6. Substitute five years for one year. [sic.]

DELEGATE BLOUNT: I think it would be helpful if we dealt with each one separately.

DELEGATE CORN: But this is the first one.

CHAIRPERSON FREEMAN: I am. I am, Delegate Blount.

I would like to hear a reason for it, Delegate Corn.

DELEGATE CORN: All right. No person may be appointed to the Tenure Commission unless he or she is a bona fide resident of the state and has maintained an actual place of abode in the state for at least five years immediately prior to his appointment.

It is for uniformity. Since you are going to be -- since this Tenure Commission, in essence, is going to be judging judges. How can they possibly judge them if they have not lived here long enough to even get the flavor or the taste of our state -- or our city, whatever it becomes?

DELEGATE BLOUNT: We have already said --

CHAIRPERSON FREEMAN: Is there discussion on this?

DELEGATE BLOUNT: We have already said, in --

CHAIRPERSON FREEMAN: Excuse me, Delegate Blount --

DELEGATE BLOUNT: We have already said in other articles that we would do that to be consistent and --

DELEGATE CORN: Right.

DELEGATE BLOUNT: -- so it is not a big issue.

DELEGATE CORN: It is not a big issue. I don't know why there is any problem about it.

CHAIRPERSON FREEMAN: Is there any discussion on it.

DELEGATE SHELTON: We have already adopted it.

CHAIRPERSON FREEMAN: That is true. Is there any discussion on this?

DELEGATE CORN: How could there be any problem on this?

CHAIRPERSON FREEMAN: That is true. We have already adopted this for other articles.

Discussion? Delegate Simmons.

DELEGATE SIMMONS: I was going to say that before this has been adopted, we need for the Style and Drafting Committee to see that that kind of compatibility and consistency is obtained and Delegate Corn's --

DELEGATE CORN: Point of order.

DELEGATE SIMMONS: -- Delegate Corn was present when we discussed making this change last night.

DELEGATE CORN: Point of order. Point of order, Madam Chair. As I understood the change last night, it was not to change it throughout the five years but in keeping it every place it was pointed out it was there to change it.

If the body does mean, in fact, that each and every place throughout this document on judicial, it should be changed from one year to five years, that is no problem with me. I have no problem changing that in committee.

DELEGATE BLOUNT: Let's just do it by consensus.

I would suggest that we just do it by consensus.

CHAIRPERSON FREEMAN: Is that agreeable to the body?

[Most voices; Yes. Yes.]

CHAIRPERSON FREEMAN: Now, let's have some clarification. Are we talking about consensus for this line only or throughout the entire article that in every situation we are talking about five years rather than one year. I think that is a very different thing.

Delegate Rothschild.

DELEGATE ROTHSCHILD: Yes. I have a question -- a point of information or question for the maker of the motion. It's changed to at least five years immediately prior. Does that mean that that five years could be uninterrupted or that it shall not be interrupted? If someone were to move out of the state for a month and move back in, would that break the five years?

DELEGATE CORN: We are talking about uninterrupted, not in the sense that you go away on a vacation for a month or two but somebody who, let's say, has lived here with his or her parents who maintained a place of abode here, moved out to Illinois for three years to go get their graduate degree or their law degree or whatever or to form a business or do

business sales and moves back here. That is not a contiguous five-year period. To go away for a month or two to visit relatives or to go to Europe on a summer vacation does not nullify a five-year period.

DELEGATE ROTHSCHILD: My question is related to change in residence. Somebody has to change residence because they could not -- say somebody could not find an apartment and had to temporarily move out of the state or something like that and then moved back in?

CHAIRPERSON FREEMAN: I think, Delegate Rothschild, that would be left to the interpretation, in fact, of the legislature or the courts. I am sure that issue has been dealt with many times in considering residency requirements and other situations.

Delegate Garner.

DELEGATE GARNER: Thank you. If it is in order, I call the question.

[The question is called. There is a second.]

DELEGATE BLOUNT: We just had a consensus vote so it is not necessary.

CHAIRPERSON FREEMAN: Delegates, do we agree to close off debate on this and to adopt this by consensus?

SEVERAL VOICES: No. SEVERAL VOICES: Yes.

DELEGATE SIMMONS: Just a point of clarification now for us. I think that it is one thing to agree to a subject area for consistency but then it is quite another thing that we don't have access to certain things. I don't think that the will of the majority can be in question on that at all.

CHAIRPERSON FREEMAN: You are correct. We only agree to each section. That is correct.

DELEGATE SIMMONS: Oh, yes.

CHAIRPERSON FREEMAN: We are only dealing, Delegates, with the consensus on this section. This is not throughout the entire article.

Now, I am going to ask for a doing-it-by-consensus vote one more time. If I hear a no, then we will take a vote.

Are we agreed to require a five-year residency? Can we do that by consensus?

[There is a chorus of ayes.] [Unanimous consensus.]

CHAIRPERSON FREEMAN: Thank you.

Delegate Corn, you had another amendment.

DELEGATE CORN: Yes, I do have another amendment. This is on pages 14 and 15, starting with line 10 and -- starting on page 14 at line 10 and going through line 4 on page 15. I would like to change -- the thrust of my motion will be to change the composition of the Tenure Commission.

And the way I would like it to read is, "Three shall be non-lawyers elected in a non-partisan election. Two shall be lawyers elected in a non-partisan election. And two shall be from the Board of Governors of the Unified District of Columbia Bar."

So A stays the same; B and C change.

B says "Two lawyers shall be elected in a non-partisan election and shall be lawyers."

And C changes and says, "Three shall be elected in a non-partisan election and shall not be lawyers."

[The motion is made. There is a second.]

CHAIRPERSON FREEMAN: Discussion on this amendment?

DELEGATE CORN: May I speak to my own motion?

CHAIRPERSON FREEMAN: Yes, you may, Delegate Corn.

DELEGATE CORN: Since the Tenure Commission is virtually going to spell out the life and death of the judge sitting on the bench, that Tenure Commission has a tremendous amount of influence on the judge.

Despite all of the good thoughts that I have heard here about the sancrosanct nature of the Bench and the saintliness of judges, I for one do not believe in the saintliness of any human nature.

It seems to me, judges, like every one of us, are human and are subject to pressures. If someone who is on the Tenure Commission -- if the whole Tenure Commission is basically comprised of party appointments -- and when you are talking about two from the Governor, two from the Bar and one from the Legislature, you are in essence talking about all five being from the same source -- the party in power. And directly hand-picked by the Governor.

It seems to me that it would be very, very wrong to give such a body the kind of power of life and death over a judge, the ability to influence that judge on a case-by-case basis and please don't say that they are immune. They are not immune.

VOICE: I wish you would lower your voice.

VOICE: Shhh.

VOICE: That hurts my ears.

DELEGATE CORN: Another thing -- shut up --

CHAIRPERSON FREEMAN: Delegate Corn --

DELEGATE CORN: My time is not up.

CHAIRPERSON FREEMAN: Delegate Corn has the floor.

DELEGATE CORN: Another thing, to say that people -- if a judge rules a certain way in a case, people have long memories and will remember that that judge judge wrongly in

a case, let's say, on gay rights or abortion or an anti-abortion issue or a woman's rights issue or a rape issue and in this city and in this proposed state that simply is not true.

With the high rate of transiency here, five years or six years or ten years down the road, I really doubt that you have more than 40 percent of the people here who might have been there at the original time when that judge made that ruling.

I, therefore, strongly urge you to vote for my amendment so that again, you put the power back with the people. If there is to be supreme power, I strongly feel it should be with the people, not with some body that is supposed to have higher abilities than the rest of us.

Remember, this is a government for, by and of the people. Why do we have to have so many layers in between the people and their representatives?

Do you have a review body of legislators of the Governor? No. But you have insisted upon a review body for the judges. If you are going to have it, have it by and of the people. Thank you.

CHAIRPERSON FREEMAN: Delegate Corn, would you please bring your amendment up to the Secretary?

Is there discussion on this? Delegate Simmons.

DELEGATE SIMMONS: I just wanted to make a remark to Delegate Corn. I humbly request that she not engage in these dialogs with herself and just simply make her point.

VOICE: Diatribes.

CHAIRPERSON FREEMAN: Delegate Brian Moore.

DELEGATE BRIAN MOORE: Yes. I would like to speak in favor of the motion on the floor. I am extremely disappointed in the present make-up of the Judicial Nominating Committee and the proposed Tenure Committee.

I really think we do not have a separation of powers, as this Constitution lays out or as is being laid out now.

We have the Governor or Executive Branch and the Legislative Branch intimately involved in the selection and appointment of judges and of their evaluation and I do not doubt one iota that the -- that this Tenure Commission is going to be able to influence the public.

What they say, I am sure will be taken word-for-word 100 percent. And here you have the Governor and the Legislature determining that issue so there is not really going to be a separation of the Judiciary from the Executive and the Legislature.

And it is not going to be a people's choice.

I know the proposed article in Absalom Jordan's motion can be itemized as that the people will vote on it but when you have the Tenure Commission composed of part of the establishment, part of the people who are really concerned about preserving their own positions and preserving their future and their colleagues and I do not think that it is an objective body. The Tenure Commission as it is now composed, I do not think it is an objective body and I really think we are in for trouble. There is no separation of powers.

With Ms. Corn's amendment, I think that that contributes to the separating of the powers. It allows laymen to be part of that commission. It allows them to participate and excludes all lawyers or many lawyers and would exclude or limit or minimize the impact of the Executive Branch and the Legislative Branch so I urge you to please vote Ms. Corn's amendment in.

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: Last night we voted --

CHAIRPERSON FREEMAN: Excuse me, Delegate Schrag.

[Pause for brief side conference.]

Proceed, Delegate Schrag. Sorry.

DELEGATE SCHRAG: Last night, after we knew that we were going to have retention elections for judges, we voted

to have an all-appointed Nominating Commission for judges. We did so for very sound reasons.

We have already put the electorate into the process of our judicial selection and retention procedure. There comes a point at which, when it comes to the judiciary, too much democracy can be a bad thing. The whole point of the judiciary is that it is independent of the elected branches of the government.

It is a -- the idea of the judiciary is that the judiciary are the people who uphold the rights of the people, of individuals, of minorities, of unpopular movements, of unpopular groups and individuals against the will of the majority and so the judiciary is deliberately insulated in the United States by the Federal Constitution and by the constitutions of most of the states from all but a small dose of the democratic influence.

Now, we have put that dose of democratic influence into our Constitution now, through the retehtion election procedure and we need also to include in our Constitution protection against that becoming an overdose and the Nominating Commission that we nominated -- we put in the Constitution last night is one such protection -- a professional, appointed Tenure Commission is another such protection and I urge you to

reject the amendment.

CHAIRPERSON FREEMAN: Delegate Blount.

DELEGATE BLOUNT: We have one member of this Commission, as stated, who would be a non-lawyer, in effect -- two, right -- so you would in effect have participation of a non --

DELEGATE CORN: That is not the same as an elected non-partisan group.

CHAIRPERSON FREEMAN: Delegate Corn, you are out of order. Delegate Blount.

DELEGATE BLOUNT: So, in effect, you would have some lay people on the commission and all the reasons that Delegate Schrag mentioned, I certainly support and I would urge the delegates to vote against this amendment.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE CORN: I wish to speak to my motion.

CHAIRPERSON FREEMAN: Delegate Corn, you may speak last.

DELEGATE EICHHORN: Point of order.

CHAIRPERSON FREEMAN: Delegate Eichhorn.

DELEGATE EICHHORN: If the maker of the motion speaks during the debate, doesn't that eliminate her right to speak from the Floor?

CHAIRPERSON FREEMAN: No, she spoke when she was introducing her motion.

DELEGATE BRIAN MOORE: Point of order, Madam Chair.

CHAIRPERSON FREEMAN: Delegate Moore.

DELEGATE BRIAN MOORE: Yes, the question was called but it was not voted on so I guess Ms. Corn is assuming that that would be voted up.

CHAIRPERSON FREEMAN: Well, the body has a choice of either allowing the speaker to speak before we vote on whether the question is called or whether we can vote to close debate and then have the speaker have the final word.

Is that preferable to the body?

[General assent is indicated. ]

CHAIRPERSON FREEMAN: All right. Then let us first vote on whether we are going to close debate. All those in favor of closing debate please say aye.

[There is a chorus of ayes.]

All those opposed.

[Kameny and Corn, Nay.]

CHAIRPERSON FREEMAN: Debate is closed.

Delegate Corn, would you like to conclude?

[Delegate Love sits down.]

DELEGATE CORN: I will repeat it again, nobody is perfectly immune to corruption, not the Bench, not the Legislature, not the Governor. The question, therefore, before us is which situation is going to be the most prophylactic? To say that there is such a thing as too much democracy in a body and in a chamber such as this is absolutely shocking and appalling to me.

When you have an appointing system where basically the Governor does the appointing, six out of the nine members of the appointing commission are selected by the Governor and then once again, in the Tenure Commission, you have the Governor virtually controlling that body, whether they are lawyers or non-lawyers, means that that judge, from the moment he is appointed until the day he gets off the Bench, is always under the control of the Governor.

That is, to me, a terrible, terrible mistake. By allowing two members to be appointed by the Bar Association for expertise, by allowing two members to be elected by the citizenry who are lawyers, you are having plenty of expertise but not controlled expertise.

And by allowing three members to be elected in a non-partisan election who are not lawyers, you are getting the average citizen who has come before the judicial system, who

has an idea of what to look for, and who will have the guidance of those four lawyers.

But the main thrust of my motion is to have five out of the seven members be elected in a non-partisan election so that they are not controlled.

VOICE: Would you please lower your voice.

DELEGATE CORN: They are not controlled by the Governor, by the party in charge, by the party in power.

I urge you to vote for this and put the power back with the people. Don't allow the Governor to become so all-powerful that you can't make a move, you can't do anything without either going out to please the Governor or incurring his or her wrath.

CHAIRPERSON FREEMAN: Delegates, we are now voting on the Corn Amendment to change the composition of the Tenure Committee. All those in favor --

DELEGATE CORN: Roll call.

CHAIRPERSON FREEMAN: I don't see five hands.

DELEGATE CORN: And quorum count. And quorum count.

CHAIRPERSON FREEMAN: Delegate Cooper, could you please count?

[A quorum count is made by Secretary Cooper.]

SECRETARY COOPER: Twenty-four delegates.

CHAIRPERSON FREEMAN: There are 24 delegates in the room. May I see hands for a roll call vote?

I am sorry, there are not five hands for a roll call vote. This will be a vote, aye or nay.

DELEGATE CORN: Could you have my amendment read before the body?

SEVERAL VOICES: No, we have already heard it.

CHAIRPERSON FREEMAN: Is everybody familiar with the Corn Amendment?

MANY VOICES: Yes. Yes.

CHAIRPERSON FREEMAN: Is there anybody who is not familiar with the Corn Amendment? Let me put it that way.

[There is no response.]

CHAIRPERSON FREEMAN: I think everybody understands it, Delegate Corn.

All those in favor of the Corn Amendment, please say aye.

[There is a chorus of ayes.]

All those opposed?

[There is a louder chorus of nays.]

Abstentions?

[There is no abstention.]

The Corn Amendment is defeated.

Delegate Eichhorn had an amendment.

DELEGATE EICHHORN: I would like to propose that on page 12 that at the end of "Govern the business of the Tenure Commission,"the end of three, a sentence be added which reads, "The Tenure Commission may conduct studies and make recommendations regarding the administration of the courts" and I would like to speak to this if there is a second.

[The motion is made.]

CHAIRPERSON FREEMAN: Is there a second?

[There is a second.]

CHAIRPERSON FREEMAN: Delegate Eichhorn.

DELEGATE EICHHORN: This is, page 13, three -- the end of three. It would be a new line eight. I am proposing -- the committee is proposing at the end of this article - I really would like to have the attention of the delegates.

CHAIRPERSON FREEMAN: Delegates --

DELEGATE EICHHORN: Because I care about this. Okay? Mr. Love, my debate is primarily directed to you, particularly.

At the end of the Judiciary Article, the Committee is proposing the establishment of a State Judicial Advisory Commission as a temporary Commission for the purpose of studying the issues of neighborhood courts and housing courts and other

lower courts. It is something that many of us on the committee felt strongly about and did not feel we had sufficient time to study and develop recommendations on but we wanted to ensure that there was a process that continued.

In a conversation with Mr. Love today, he proposed that we adopt a portion of the Alaska Plan that would create some mechanism for the study of the administration of the courts. He proposed that it might be left with the Tenure Commission.

I have no objection to that. I do object to the amendment he has circulated which makes the State Judicial Advisory Commission a permanent commission by adding that responsibility.

I do not think we need three paid commissions. I think that some of those persons who are interested in neighborhood courts and would like to serve on that particular commission may not want a six-year term on a tenure commission.

I see them as being quite different in nature and make-up and therefore, I would like to propose that we debate whether we want to have this provision built into the judicial system and if so, I recommend it be with the Tenure Commission and not with what I think ought to be a temporary commission for the single purpose of focusing on neighborhood

courts, housing courts and arbitrations and would be a lot less expensive with a two-year life. Thank you.

CHAIRPERSON FREEMAN: Delegate Love.

DELEGATE LOVE: I would like to speak in support of this motion. One of the things many of us have had happen to us if we have been to court, is to realize that the court is not always run in the most efficient way possible.

Somewhere along the line I think it would be very good to have some independent body look at the way the court is organized and running and make recommendations.

Basically, it could be done in one of two ways. It could be placed with this Commission as it is in Alaska. Or it could be placed as a separate Commission. I spoke with some members who thought it might be as a separate Commission although you have the problem of separate Commission with additional money and expense.

I think it could just as well be here as it is in Alaska so that this Commission which already to an extent is evaluating how well the judges are operating and because of the way we have written it, we will be interviewing litigants and will be interviewing jurors and interviewing judges and interviewing lawyers, will have a fair amount of information to find trouble spots within the court system and to make

recommendations as to how the court system might be improved.

So I think that this would be as good a place to put it as a separate commission. I also think that by putting it here, the commission will -- we will save some money in the court system in the long run. So I would like to urge this.

Keep in mind that this is not running the courts. All this would be empowered to do is to make studies of the way the court is operating, to look at alternatives.

For example, in many places now, jurors serve for one day only. They do not serve for two weeks. So it does not take so much time out of your life. So I would like to recommend adoption of this. All it would do would be to empower this tenure commission to study the courts and since they already have to study the operation of the courts to some extent to decide how the judges are operating within those courts, I think it would be a good place to put it.

Thank you.

CHAIRPERSON FREEMAN: Delegate Schrag.

DELEGATE SCHRAG: I would like to ask the maker of the motion if it would be acceptable to her to -- assuming you have the text --change the name of this tenure commission wherever it appears to "Commission on the Judiciary."

It seems to me that it is a kind of a misleading

thing to have a commission on tenure and disabilities. That sounds like that is its function, instead of doing all these things and so if it is acceptable to the maker to do that, I propose that by consensus we accept the name "Commission on the Judiciary" throughout the document or wherever it appears.

DELEGATE EICHHORN: I would like to discuss that a little bit. My concern is that --

CHAIRPERSON FREEMAN: Then let us wait and make that as a separate amendment and finish this first.

DELEGATE EICHHORN: Well, could we have some dialogue? Oh, I see what you are saying.

CHAIRPERSON FREEMAN: We are still on an amendment right now and this would be a separate amendment, if you want to debate it.

Delegate Bruning.

DELEGATE BRUNING: I move the previous question.

[The previous question is moved. There is a second.

CHAIRPERSON FREEMAN: All those in favor please --

SPEAKER: What is the question?

CHAIRPERSON FREEMAN: Of closing off debate.

Please say aye.

[There is a chorus of ayes.]

All those opposed.

[There is no opposition.]

Debate is closed.

DELEGATE CORN: Please read the motion.

CHAIRPERSON FREEMAN: Delegate Eichhorn, would you like to read your motion one more time?

DELEGATE EICHHORN: "The Tenure Commission may conduct a [inaudible] regarding the administration of the courts.

CHAIRPERSON FREEMAN: All those in favor of the motion please --

DELEGATE CORN: Point of information. Point of information.

CHAIRPERSON FREEMAN: Delegate Corn.

DELEGATE CORN: Doesn't some other part of this document say that the Supreme Court shall be --

CHAIRPERSON FREEMAN: Delegate Corn, this goes to the content and I think you should have raised this during debate.

All those in favor of this amendment, please say aye.

[There is a chorus of ayes.]

All those opposed.

[Delegate Corn is opposed.]

Abstentions.

[There are no abstentions and motion is received.]

The amendment is adopted.

Delegate Schrag.

DELEGATE SCHRAG: I guess I will make it a motion now that we adopt the document that refers to this commission as the Commission of the Judiciary.

DELEGATE SIMMONS: I second that.

[A motion is made and seconded.]

CHAIRPERSON FREEMAN: May we accept this, delegates, by consensus?

[General agreement is expressed.]

Is there anybody who is opposed?

[Several delegates express opposition.]

DELEGATE EICHHORN: I am not sure.

CHAIRPERSON FREEMAN: There are several delegates who are opposed. We shall have to debate on this.

Delegate Eichhorn.

DELEGATE EICHHORN: I am not sure I am opposed but I really would like to discuss this. In the Judiciary Committee we considered this issue. There is a body within the judicial system within the court structure that deals with the administration of the courts.

There is a comparable body within the Unified Bar which does the same thing. We are now creating a third way and I am not opposed to that. There may be some merit to that, to also study improvements in the court system.

I am concerned about red-flagging that -- about making that seem a major change in the system which it -- I think it is not likely to be. And changing the name of the Commission might very well do that.

When you call it the "Commission on the Judiciary" it is as though the commission is running the entire -- I mean, I am not sure that is wise and I would like to hear some other comments on this.

CHAIRPERSON FREEMAN: Delegate Jones.

DELEGATE JONES: I have some problems with that because if we call it the Commission on the Judiciary, it seems to me that people who have problems would have the right to appeal to that commission in order for them to solve those problems and that is not the kind of commission it is.

And I would vote no, because of the definition that this commission takes on if you call it the Commission on the Judiciary.

CHAIRPERSON FREEMAN: Is there any more discussion on this amendment? Delegate Schrag.

DELEGATE SCHRAG: I wonder if I might have the exact wording of the Eichhorn Amendment?

CHAIRPERSON FREEMAN: Delegate Cooper.

SECRETARY COOPER: The Tenure Commission may conduct studies and make recommendations --

DELEGATE JONES: A point of order, Madam Chairman.

CHAIRPERSON FREEMAN: Delegate Jones.

DELEGATE JONES: A point of order. I thought we were discussing the motion to change the wording from "Tenure Commission" to"The Commission on the Judiciary." I did not know that we were bringing up things that were passed before they came up.

CHAIRPERSON FREEMAN: Delegate Jones, I think the reason why the question was asked was that it pertained to the content of changing the name.

Delegate Cooper.

DELEGATE COOPER: "The Tenure Commission may conduct studies and make recommendations regarding the administration of the courts."

DELEGATE SCHRAG: Madam President, there are two choices for the name of this Commission. Either it can be called a Commission on Tenure and Disabilities or something very close to that -- which is a very narrow function having